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Chairman: Mr. Rachkov (Vice-Chairman) ..... (Belarus)

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In the absence of Mr. Al Bayati (Iraq), Mr. Rachkov (Belarus), Vice-Chairman, took the Chair.

The meeting was called to order at 3.10 p.m.

Agenda item 67: Promotion and protection of human rights (*continued*) (A/61/36, 97, 220 and 280)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*) (A/61/211, 267, 281, 287, 289, 306, 311, 312, 324, 325, 338, 340, 348, 352, 353, 384, 464, 465, 476, 506 and 513)

(c) Human rights situations and reports of special rapporteurs and representatives (*continued*) (A/61/276, 349, 360, 369 and Corr.1, 374, 469, 470, 475, 489, 504 and 526)

1. **Mr. Kälin** (Representative of the Secretary-General on the human rights of internally displaced persons), introducing his report (A/61/276), said that conditions for internally displaced persons (IDPs) had changed sufficiently for the better in some contexts, such as in Nepal and Uganda, to allow such persons to initiate the process of reintegration, reconciliation and reconstruction. However, the situation had deteriorated in other places, such as in Darfur and Iraq, where the number of IDPs kept growing while Governments and the international community seemed unable or sometimes unwilling to provide them with meaningful protection.

2. He had been saddened to witness desperate situations, where innocent lives had been cut short by disease, lack of food, and violence, and where people became a burden instead of leading productive lives. A constant refrain during his visits to IDPs was their sense of marginalization resulting from forced or arbitrary displacement. He had proposed policy guidelines and practical tools to help those responsible for protecting IDPs to better discharge their duties. The recognition of the Guiding Principles on Internal Displacement in the 2005 World Summit outcome document and the host of invitations he had received from Governments and organizations were highly encouraging.

3. He reviewed the conclusions and recommendations contained in paragraphs 67-78 of his report. He particularly commended the Governments of Turkey, Georgia and Uganda for taking his call seriously regarding the establishing of a legal and policy framework — as had the Governments in the African Great Lakes region and States members of the African Union.

4. Regarding the need to find durable solutions for IDPs and for returnees, he said it was crucial to ensure that their rights and needs were taken into account during peace negotiations and transitional arrangements. Displacement could be considered at an end only when the person had found a durable solution to his or her situation and access to the recovery of violated rights or to reparation or compensation.

5. He called on the international community, including the United Nations and regional organizations, to strengthen support to the Governments of countries with IDPs, on the United Nations agencies and the Inter-Agency Standing Committee country teams to continue to implement the cluster approach in a bid to provide more predictable assistance and better accountability, and on regional organizations to continue their regional efforts and to promote implementation of the Guiding Principles through the adoption of laws in their various regions. The sheer magnitude of displacement often made outside aid essential; he therefore urged donors to support Governments as they addressed not only the humanitarian crisis caused by internal displacement but also the reconstruction of their countries and the search for durable solutions.

6. **Mr. Butagira** (Uganda) said the widespread displacement in Uganda had stemmed from the expansion of attacks by the Lord's Resistance Army, with which the Government had established dialogue. Hostilities had ceased and, despite some minor setbacks, the negotiations were on course and the Government was determined to see them to a successful conclusion. Morale was high and a reversal was unlikely. Immediately the people of northern Uganda had heard of the cessation of hostilities, they had started to return to their homes; 400,000 had already returned. The Government was helping by decongesting those areas, which could be seen as one of the peace dividends for northern Uganda.

7. The Joint Military Commission was addressing ways of improving conditions in camps for IDPs. High on its agenda was the institution of law and order in the north. Hundreds of policemen had been recruited to

take over law-and-order duties from the army. Assistance had also been given to the Amnesty Commission, responsible for the reintegration of people formerly engaged in rebel activities, and for transnational justice and reconciliation activities.

8. In Juba, a very different situation prevailed. The Government had stepped up the disarmament of warriors and there had been much improvement on the ground. All of the foregoing attested to the Government's increasing efforts to improve the situation of IDPs and to do away with the concept of internal displacement.

9. **Mr. Saeed** (Sudan) took issue with the Representative's remark that the Sudanese Government was unwilling to confront the problem of internal displacement. He would like to know on what basis the Representative had made that assessment. The Representative might have mentioned the many measures taken and the positive developments achieved — not least the Darfur Peace Agreement of May 2006 designed to normalize the situation — and the need for the international community to increase its support. The question of internal displacement should not be politicized. He requested the Representative to answer his question in a manner that took the Sudan's peace consolidation efforts into account. Also, was his reference to a study on the integration of IDPs into the peace process the peace process in the Sudan or some other peace process?

10. **Mr. Kruljević** (Serbia) said his country was dealing with 250,000 IDPs. Since the conditions for safe return, including security, property issues and living conditions, had not yet been satisfactorily established, only 12,000 had been able to return. Efforts needed to focus on creating an environment that sustained return. His Government was committed to cooperating with the Representative and would give every consideration to his recommendations on ways of providing safe return.

11. **Ms. Fontana** (Switzerland) said that the humanitarian difficulties faced by IDPs were of great concern to the Swiss authorities. She would like to hear the Representative's experience of non-State actors' implementation of the Guiding Principles on Internal Displacement. Regarding northern Uganda, what lessons did the Representative think were to be drawn from earlier processes?

12. **Ms. Ajamay** (Norway) expressed her delegation's satisfaction that the Secretary-General's review of the Representative's mandate (A/61/276, para. 3) had deemed it to be positive and to complement the work of the United Nations agencies and of civil society. She would be interested to hear the Representative's opinion of the United Nations agencies' follow-up to his missions at the country level. She asked whether their collaboration in the field had been total, and what improvements, if any, could be made.

13. **Mr. Wenaweser** (Liechtenstein) said the Representative's mandate was a very important one and provided a unique opportunity for synergies within the United Nations system. While some progress had been made in legislation, much remained to be done with regard to implementation. The plethora of invitations extended to the Representative attested to the effectiveness of his role. He asked how the latter intended to place his expertise at the disposal of the newly established Peacebuilding Commission. While voluntary return was a gradual process, he wondered about long-term displacement and whether it was feasible for an IDP to return home after decades of displacement.

14. **Mr. Moreira** (Brazil), referring to the extent of consultation with non-State stakeholders, asked whether the Representative experienced difficulty of access to civil society and NGOs.

15. **Ms. Pohjankukka** (Finland), speaking on behalf of the European Union, said she shared the Representative's concern about the situation of IDPs, especially in Sri Lanka and the Sudan. She would like the Representative to elaborate on action needed to resolve land issues, including those relating to informal collective property of indigenous people and on how United Nations agencies could be coordinated with a view to strengthening the overall protection system and the protection of IDPs in particular.

16. **Mr. Montoya Pedroza** (Colombia) said the situation of IDPs called for strenuous preventive and protective measures, including policies on social and economic reintegration, which in Colombia were included in the national plan. Given the budgetary allocations and technical work required, how could the United Nations and other agencies link up in order to find a lasting solution? The cluster approach, supposedly aimed at improving coordination at the

country team level, appeared to assume the existence of a concept that was not part of agreed language.

17. **Ms. Adjalova** (Azerbaijan) said her country was home to one of the largest populations of IDPs in the world and appreciated the need to address the challenges of internal displacement from a context-specific perspective. In that connection, her delegation urged the Representative to analyse the causes of internal displacement, the needs of IDPs, and solutions that took account of specific situations, as he was encouraged to do in General Assembly resolution 60/168.

18. Her delegation looked forward to the Representative's report on the consultations with IDPs at all stages of displacement in order to identify their needs and concerns. It also hoped he would give more consideration to protracted mass displacement, from the viewpoint of the strengthened and improved United Nations response, in his future reports to the General Assembly and the Human Rights Council. She reiterated her delegation's invitation to him to visit the country as soon as was feasible.

19. **Ms. Tchitanava** (Georgia) said that the secessionist regimes' seizure of territory in Abkhazia and the Tskhinvali region/South Ossetia had made for mass internal displacement, not to mention ethnic cleansing and genocide against Georgians. Yet there was no proof whatsoever of genocide perpetrated by Georgians at any time in their history. During his visit to Georgia (ibid., paras. 8-11), the Representative had been concerned that the return of IDPs who had fled Abkhazia 15 years earlier had been hampered by the lack of political solutions, by discriminatory measures and by widespread insecurity. He had called on the parties to the Quadripartite Agreement on Voluntary Return of Refugees and Displaced Persons to cooperate in facilitating return movements and creation of conditions conducive to voluntary, safe and dignified return.

20. He had urged the de facto authorities in Abkhazia not to take measures incompatible with the right of return and with international human rights standards, to admit United Nations civilian police without further delay and to cooperate in the establishment of a permanent international human rights office in Gali, as repeatedly urged by the Security Council. He had been gravely concerned at the economic and social marginalization and poor living conditions of IDPs. The Government of Georgia was doing its utmost to improve their living conditions and integrate them into local societies.

21. The 1996 Law on Internally Displaced Persons protected their rights and legal interests, while work was under way on a comprehensive action plan and legislation for restitution of property consistent with international standards. Upon return to their permanent place of residence, IDPs would receive rehabilitation guarantees. Her Government was persuaded that only intensive international cooperation at all levels would mainstream the human rights of IDPs, ease their sufferings and facilitate their ultimate return. In that regard, she urged the Representative to continue the dialogue with the United Nations.

22. **Mr. Aksen** (Turkey) asked what activities the Representative of the Secretary-General was undertaking to ensure capacity-building, and what positive effects those would have in connection to his mandate.

23. **Ms. Assoumou** (Côte d'Ivoire) said that the issue of IDPs had been of great concern to her Government since the start of the crisis of 2002. Her country had done its utmost to help ensure the safety of its displaced population, including through the establishment of the Ministry of Solidarity, Social Security and Disability and a fund-raising campaign. The reason Côte d'Ivoire did not have special tents or villages set up for its displaced population was that relatives had taken them in. Furthermore, the Government had repatriated its nationals who had sought refuge in other countries owing to the crisis. However, the situation had not completely stabilized; there remained armed groups and a continued movement of persons to safer areas. It was not the Government but the proliferation of weapons that was responsible for the human rights violations mentioned in the report; in that regard, she called for the disarmament of the illegally armed combatants. She clarified that impunity was not relevant to her country, as its judicial system had functioned effectively throughout the crisis, and all perpetrators of crimes were brought to justice. She called upon the international community to help Côte d'Ivoire address the increase in displaced persons.

24. **Mr. Khoshnaw** (Iraq) said that he wished to clarify that his Government had made every effort to protect its population, in the framework of its national

plan for reconciliation, which included a paragraph relating to IDPs and their protection. Furthermore, the Iraqi Government endorsed two conferences being planned, one on national reconciliation, under the aegis of the Arab League, and another under the aegis of the Organization of the Islamic Conference, in its aim to achieve reconciliation among all factions and put an end to the violence responsible for the displacement of Iraqis. The Representative of the Secretary-General should take those efforts into account before levelling accusations on the willingness or ability of the Government to address the situation of IDPs.

25. **Mr. Kälin** (Representative of the Secretary-General on the human rights of internally displaced persons), responding to the questions raised, said that he was encouraged by the recent developments in Uganda, where efforts should now focus on the sustainable return of IDPs. In response to the representative of the Sudan, he said that his study focused on peace processes in general and drew on a number of examples aside from the Sudan. He recognized that efforts had been made with regard to the Darfur situation, but the situation of IDPs there remained far from satisfactory, with recent setbacks.

26. Regarding Serbia, there was a need to resolve property issues and to create conditions conducive for returnees to return and stay. He encouraged those involved in relevant negotiations to emphasize the rights of IDPs.

27. Responding to the comments by the representative of Switzerland, he said that he was indeed calling for non-State actors to respect and implement the Guiding Principles. Unfortunately, he had not had many positive responses to his appeals, and hoped that his recommendations would be implemented. He had appealed to non-State actors in Nepal to adopt a positive approach towards a durable solution for the return of IDPs there, in line with the Guiding Principles, which he hoped would lead to dialogue.

28. With regard to the lessons learned in northern Uganda, efforts made in the areas of development, the rebuilding of infrastructures and the reopening of basic services needed to go hand in hand with the humanitarian assistance provided to returnees. Secondly, mechanisms should be set up to address land disputes. Thirdly, the Government needed to work with the relevant actors, including traditional leaders of IDPs and local authorities to address realities on the ground.

29. To ensure the mainstreaming of the human rights of IDPs into the activities of United Nations agencies, he regularly debriefed those agencies and made frequent contact with them. The results from those efforts were mixed depending on the country.

30. The Peacebuilding Commission played an important role in addressing IDPs, as it was responsible for building conditions for durable solutions to the issues IDPs faced, whether for their return or local integration. He would attempt to outline that role through a study which would explore the relationship between the concept of peacebuilding and the challenges facing IDPs.

31. Turning to the question of the return of IDPs after a long period of time, the guiding principle was to ensure that IDPs had the right to choose where they wished to live and to recover their property.

32. On the question of operationalizing approaches at the United Nations level, Heads of States or Government had recognized the Guiding Principles as an important international framework for IDPs. United Nations agencies needed to further discuss ensuring the protection of IDPs in practice, under the existing institutional framework for that purpose.

33. The cluster approach was not a new concept, but was meant to improve the collaborative approach already endorsed by the General Assembly, by assigning responsibilities to agencies in order to coordinate humanitarian responses.

34. Regarding country visits, he would be visiting Azerbaijan in the first half of 2007, and was pleased to have been invited to Georgia for a follow-up visit on the implementation of a new approach in its IDP policy.

35. He had not had the opportunity to cover the situation in Iraq in depth, but acknowledged the efforts the Government had made; the situation in the country indeed hindered the ability to ensure displaced persons were protected at all times. It was encouraging that an IDP policy was being developed, and he looked forward to working with the Iraqi authorities in the future.

36. **Mr. Saeed** (Sudan) said that he wished to know how the Representative had reached his conclusion on

the "unwillingness" of the Government of the Sudan to protect IDPs. That was a highly politicized statement and a serious and unacceptable accusation, which he wished to see withdrawn.

37. Also, he wished to know which peacekeeping operations the Representative had in mind with reference to capacity-building and the inclusion of an IDP component in peacekeeping operations in the Sudan.

38. **Mr. Kälin** (Representative of the Secretary-General on the human rights of internally displaced persons) clarified that he had not made such a sweeping statement about the Government's unwillingness, but had said that it seemed "unable and sometimes even unwilling" to protect the lives of IDPs. There had been well-known instances of a lack of cooperation and of the vigorous steps needed to address the dangers to which IDPs had been exposed. He would welcome an opportunity to visit the country and see for himself.

39. **Ms. Jahangir** (Special Rapporteur on freedom of religion or belief), introducing her interim report (A/61/340), said that it set forth concerns about the limitations on the manifestation aspect of the right to freedom of religion or belief, including the display of religious symbols, the possession of religious literature and the right to propagate. The report also addressed the particular vulnerability of members of religious minorities and persons deprived of their liberty to violations of that right. There had also been fresh attempts to legislate against certain forms of conversion over the past few years.

40. She had conducted visits to Azerbaijan and the Maldives, and would present her reports on those visits to a future session of the Human Rights Council. In Azerbaijan, she had observed a high degree of tolerance among the population in general. However, while the Government generally respected the freedom of religion or belief, that was not true for all regions of the country, as there had been cases of limitations imposed by the authorities on individuals and religious communities.

41. In the Maldives, she had observed the desire of the people to maintain peace and harmony, but was concerned by de jure and de facto limitations on the right to freedom of religion or belief of non-Muslims in the country. She welcomed the Government's recent accession to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. However, she hoped that the Government would take steps to review its reservation to article 18 of the latter as soon as possible.

42. She had received invitations for country visits from the Governments of Tajikistan and the United Kingdom. While the Government of Israel had extended an invitation the previous year, it had not yet responded to her request for specific dates. She had requested invitations from a number of Governments over the past year, and urged their timely response. She continued to be concerned that some of the worst violations of religious freedoms came from countries which were inaccessible to the mandate.

43. Her report also contained recommendations to the United States Government on some of its techniques for interrogating detainees at Guantánamo Bay.

44. She welcomed the request from the Human Rights Council (ibid., para. 5) to submit a report on the trend of defamation of religions and incitement to racial and religious hatred or belief, in particular its implications for article 20, paragraph 2, of the International Covenant on Civil and Political Rights. Indeed, an open discussion on that issue needed to be encouraged. In the age of globalization, a balanced approach should be taken to ensure that universal human rights were not undermined to achieve short-term gains. She urged Member States to ensure that there was no impunity for incitement to religious hatred, and she encouraged the Human Rights Committee to seriously consider drafting a detailed general comment on that matter, as defined by article 20 of the Covenant.

45. She stressed that, while there was often a tendency to view freedom of religion or belief in a narrow sense, it was essential to ensure that that right added to the values of human rights and did not unintentionally become an instrument to undermine freedom.

46. **Ms. Pohjankukka** (Finland), speaking on behalf of the European Union, said that it was critical to create greater tolerance and combat all forms of discrimination based on religion or belief and incitement to religious hatred. The European Union reiterated its readiness to engage in constructive and genuine dialogue, as called for by the Special Rapporteur.

47. She wished to know whether the Special Rapporteur considered that the principles of freedom of religion and belief should always be enshrined by law. She also wondered whether the Special Rapporteur had come across situations in which persons with no religious ascription had suffered from discrimination. The Special Rapporteur had held consultations with representatives of the Holy See; she wondered whether consultations would also be held with religious leaders of other confessions. She asked whether the Special Rapporteur had noted any changes in the situation of the persecution of members of the Baha'i community in the Islamic Republic of Iran.

48. **Mr. Vohidov** (Uzbekistan), recalling that the Special Rapporteur had indicated that Governments must more actively combat the religious intolerance which was growing with globalization, said that Uzbekistan, at the most recent Shanghai Cooperation Organization summit, had particularly emphasized the risk that international terrorism would come to be associated with Islam. When the Western press had published caricatures of the Prophet Muhammad, they had triggered ill-considered comments which damaged the reputation and honour of millions of people. The international community must make a consistent effort to improve mutual understanding among different ethnic and religious groups.

49. Despite the difficulties of having a transitional economy, Uzbekistan had managed to maintain an environment of political stability, civil peace and ethnic and religious harmony, in which over 100 ethnic and national groups coexisted and in which rights and freedoms were upheld. Over 2,200 religious organizations, belonging to 16 faiths, were registered in the country. Since independence, there had been no instances of inter-ethnic or inter-religious conflict in Uzbekistan.

50. In the interests of being able to assess Government action objectively, he would like to know if the Special Rapporteur could provide insight on the principles and mechanisms for Government monitoring of the content of religious publications and on how to determine how strict that monitoring should be.

51. **Ms. Adjalova** (Azerbaijan) said that the high level of religious and ethnic tolerance in Azerbaijan had been an integral part of the country's history and tradition. Azerbaijan was always willing to share its experience and best practices on inter-religious dialogue and cooperation, and had hosted a number of regional and international meetings and events on that subject. Her Government looked forward to further cooperation with the Special Rapporteur to address the remaining gaps in the promotion and protection of the right of freedom of religion or belief.

52. **Mr. Latheef** (Maldives) said that although his country was small, its population had maintained harmony for a long period of time. Through the Constitution of 1932, it had promulgated Islam as the sole religion, and the country had enjoyed relative peace and stability, without any major challenges to that aspect of the Constitution. Nevertheless, his Government had embarked on a major process of political and constitutional reforms, and the people would themselves adopt the best practices in that regard.

53. The country was undergoing unprecedented political difficulties and instability; in that regard, he hoped that the issues the country needed to address would be commensurate with its ability to resolve them.

54. **Ms. Filetas** (Canada) said that Canada agreed with the Special Rapporteur that issues of freedom of religion or belief were linked to the level of democracy of a society. With regard to the Special Rapporteur's call for the development of a common global strategy to deal with rising religious intolerance, she wished to know how the international community, in drawing up such a strategy, could ensure respect for fundamental rights while also ensuring that regional contexts were taken into account, and how it would ensure that the voice of religious minorities could be heard.

55. **Mr. Cabral** (Guinea-Bissau) said that his delegation had been struck by the difficulties which still remained 25 years after the adoption of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, despite the central place occupied by the freedom of thought, conscience and religion in the Universal Declaration of Human Rights and the indivisibility of any one category of human rights from any other. As no free, democratic society could exist without religious freedom, the new phenomenon of stigmatizing individual religions and their adherents must be tackled. Having the wrong appearance, through wearing a beard or having a particular style of dress, had become almost a crime, hindering free

movement and the development of individuals and society. The Special Rapporteur deserved the support of the Third Committee and of all Governments in her difficult task of encouraging people to see beyond the differences of race and religion. The growing intolerance highlighted by the Special Rapporteur must be replaced by harmony and understanding, which were essential to peace and security.

56. **Mr. Cumberbatch Miguén** (Cuba) said that his delegation would be interested to know the views of the Special Rapporteur on the pressure facing adherents of non-mainstream religions. The experience of 1,500 years of colonization had led to many traditional practices being forgotten or marginalized. Following the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, he wondered how to continue to combat discrimination in that regard, particularly against those of African descent, who were rarely protected because their practices were not considered a matter of religion, but of folklore.

57. **Ms. Jahangir** (Special Rapporteur on freedom of religion or belief) said that she was encouraged by the support expressed for her mandate, as freedom of religion or belief was a core human rights issue. If that right was not preserved, other rights could easily be threatened. The relationship between Governments and religion had been discussed for many years, raising the question of how much action constituted interference and how much inaction constituted neglect.

58. While legislation had a part to play in safeguarding freedom of religion or belief, it must not be an instinctive first step. For example, legislation could be counterproductive in preventing conversion to another religion by methods that could be interpreted as unethical. While it was not for Governments to say how religion should be practised, they must not shrink from taking action when warranted, not just by enacting legislation, but by enforcing legislation. She and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance agreed that Governments must prevent impunity, especially in cases of incitement to violence.

59. Both she and her predecessor had maintained that individuals with no religion or belief must have equal rights, as the freedom to adopt a religion was paralleled by the freedom not to do so. Her talks with representatives of the Holy See, the Organization of the Islamic Conference and Buddhist high priests in Sri Lanka, as part of an ongoing effort to improve dialogue between religions, had focused not only on the issues specific to each religion, but also on encouraging more intensive interaction. Above all, that meant dialogue which involved not just religious leaders, but also the population, including those of no or indeterminate faith, and including women.

60. She had issued a press release expressing concern at the situation of Baha'is in the Islamic Republic of Iran but the improvement she had hoped to see had not materialized, with continued reports from credible sources on the authorities' attempts to identify, monitor and sometimes arrest individuals belonging to that faith. Religious minorities still suffered everywhere. In a globalized environment, where the voices of the mainstream religions were loudest, discrimination and violence against smaller religious communities were overlooked. Monitoring of religious publications was also common everywhere. She could think of one example of a total State ban on imports of religious publications, another of mandatory and time-consuming State approval for such imports, and yet another of all but a fraction of large consignments of imported publications being withheld, to prevent propagation of the beliefs concerned.

61. The balance between freedom of religion or belief and other human rights was difficult to preserve, but must be pursued, in line with article 1, paragraph 3, and article 8 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, which defined permissible restrictions and the overall framework of human rights. While cultural and religious diversity must be upheld and celebrated, that must not involve derogating from any human rights. Strategies for combating intolerance must be global, just as patterns of discrimination were global. However, the characteristics of individual countries and regions must also be taken into account. It was impossible to deal with intolerance simply by preaching tolerance. The international community must evolve a strategy for policy, education and legislation; it must discuss how to improve dialogue and avoid being defensive about the issue of religion simply because it was sensitive. It must progress from superficially diagnosing the problem to actually treating it.

62. **Mr. Despouy** (Special Rapporteur on the independence of judges and lawyers) said that his

report to the General Assembly (A/61/384) had described his activities between November 2005 and October 2006 and indicated his future plans, which included missions to the Maldives, Cambodia, Kenya and the Islamic Republic of Iran. Three missions to Ecuador had enabled him to observe the positive changes which had taken place since the institutional crisis of 2004. Judges had been elected to its new Supreme Court of Justice in a transparent manner, with observers from national and international organizations, including the United Nations, present. Because presidential and parliamentary elections were under way, he would wait until the next session of the Human Rights Council to present a follow-up report.

63. He had placed particular emphasis on the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance as the culmination of years of negotiation. In connection with military justice in the context of the trying of civilians and serious human rights violations, he had urged States to bring their domestic legislation into line with international standards on military jurisdiction and to respect the integrity of the judicial system. He had also highlighted the joint report on the situation of detainees at Guantánamo Bay (E/CN.4/2006/120). Since its submission to the Human Rights Council, the United States Administration had adopted an act allowing secret detention, military tribunals and harsh interrogation.

64. In his report, he had described the steps which the International Criminal Court was taking to bring its first case to trial and the trials undertaken by the Extraordinary Chambers in Cambodia. Those trials would bring justice closer for the victims of human rights violations. He had reiterated his concerns about the Supreme Iraqi Criminal Tribunal trying Saddam Hussein and his former aides, calling once again for the Tribunal to operate in line with international standards or to be replaced by an international criminal tribunal with the cooperation of the United Nations.

65. Lack of confidence in justice was difficult to restore, but judicial independence was vital to democracy, to the proper functioning of State institutions and to the citizens' quality of life. Consequently, judges must not continue to be exposed to pressures and threats, including threats to their lives.

66. **Mr. Afifi** (Egypt) said that, according to paragraph 40 of the Special Rapporteur's report, Egypt's military courts were competent under the law on counter-terrorism to try civilians accused of terrorism. That was incorrect, as there were no military courts competent to try terrorism cases. Terrorism cases were tried by State Security Courts, which only dealt with cases affecting public order. They were civilian courts which preserved the access of the accused to appeal and cassation. Egypt was in the process of enacting a counter-terrorism law which was expected to enter into force shortly, superseding the use of emergency laws in terrorism cases.

67. **Mr. Llanos** (Chile) said that his delegation was concerned at the need, once again highlighted by the Special Rapporteur, to bring the use of military justice into line with international standards. It hoped that the situation would improve rapidly once the draft principles governing the administration of justice through military tribunals entered into force. Recalling that article 4 of the International Covenant on Civil and Political Rights provided for the preservation of international judicial standards in emergency situations, it wondered whether the Special Rapporteur planned to examine the issue of what judicial standards applied in such situations.

68. **Ms. Moreira** (Ecuador) thanked the Special Rapporteur for supporting the transparent reform of Ecuador's Supreme Court, and expressed the hope that any further observations he made regarding the monitoring of the situation in Ecuador would take into account the comments that had been submitted by the Ecuadorian Government.

69. It was hoped that, following elections, Ecuador's new Parliament would adopt a draft organic law on the functioning of the judiciary.

70. **Ms. Pohjankukka** (Finland), speaking on behalf of the European Union, welcomed the Special Rapporteur's focus on the specific problems faced by countries in transition with regard to the administration of justice, as well as his valuable analysis on the right to the truth.

71. Referring to the role of international organizations in facilitating the development of justice systems, she asked how the contribution of international associations of judges and magistrates might best be incorporated into international cooperation programmes.

72. Information on best practices with regard to the coordination of proceedings of courts and truth commissions with a view to preserving the independence of the judiciary would be appreciated.

73. **Mr. Ainchil** (Argentina) thanked the Special Rapporteur for acknowledging the efforts of the Argentine Government to carry out reforms that would define clearly the areas of competence of civilian and military jurisdiction. In that regard, it would be useful to have further information regarding the extent to which the independence of judges, lawyers and other members of the judiciary was affected by the use of threats, pressure and intimidation against them.

74. **Mr. Moreira** (Brazil) asked the Special Rapporteur to elaborate on the relationship between independence of the judiciary and access to justice.

75. **Mr. Cabral** (Guinea-Bissau), endorsing the statement made by the representative of Egypt, said that Guinea-Bissau welcomed the adoption by the Human Rights Council in June 2006 of the International Convention for the Protection of All Persons from Enforced Disappearance, and expressed the hope that the General Assembly would also adopt that instrument as soon as possible. It was impossible to uphold the rights of displaced persons and ensure the full independence of the judiciary and the rule of law as a whole without a reliable justice system and the financial means to support it, which in turn would inspire public confidence in that system. Justice was one of the key priorities for countries emerging from conflict situations in particular.

76. Guinea-Bissau shared the view that civilian cases should not be tried in military courts, and that that standard should be respected by the entire international community.

77. He expressed the hope that the Special Rapporteur would have access to all countries, given that he was helping those countries he visited to build confidence in their respective justice systems and in the rule of law and access to justice. In that regard, he asked whether all countries had shown support for the Special Rapporteur's activities, and whether States emerging from conflict had the necessary means to ensure the minimum level of such support. While national justice systems may differ, the administration of justice and the rule of law in all countries should be based on universal principles.

78. **Ms. Taracena Secaira** (Guatemala) wished to point out, by way of clarification, that the draft law referred to in paragraph 34 of the report, which would give military courts competence to try all offences committed by military personnel, had been presented by a single member of Congress and was an initiative for which, to date, there had been no support. Consequently, it was not expected to come before the legislature in the near future.

79. It would be interesting to learn how adoption of the International Convention on the Protection of All Persons from Forced Disappearance might enhance the work and mandate of the Special Rapporteur.

80. **Mr. Khoshnaw** (Iraq), referring to the concerns expressed in paragraph 58 of the report regarding the conformity of the proceedings of the Iraq Supreme Criminal Tribunal with international law, said that the Tribunal was subject to the authority of the Iraqi Judicial Council, which appointed independent judges to the Tribunal and presidents to the various chambers and was entirely independent of the Executive. The right to a defence was guaranteed under the Constitution. The murders of judges and lawyers reported by the Special Rapporteur were not necessarily attributable to the specific nature of the case, but rather to the prevailing situation of violence throughout Iraq. The Government was doing everything in its power to achieve security and stability by ending ongoing violence, terrorism and human rights violations, which were part of an organized campaign of intolerance that was threatening to bring about the collapse of the political process by causing clashes among the various communities. The Government hoped that the international community would support it in those efforts.

81. **Ms. Otani** (Japan), referring to paragraph 63 of the report on the Extraordinary Chambers in Cambodia, which stressed the importance of the conduct of trials in full compliance with international standards on the right to a fair, impartial and independent trial, said that it was also important to provide defence counsels with training relating to those international standards. In that regard, she asked the Special Rapporteur how the international community, including Member States and civil society, could help the Chambers to conduct trials in compliance with those standards.

82. **Ms. Borjas** (El Salvador) said that the defence of judicial independence was an essential means of ensuring a transparent system for the administration of justice and, ultimately, of ensuring peace. It would be useful to have additional information regarding access to justice, particularly among young persons.

83 **Mr. Cumberbatch Miguén** (Cuba) asked the Special Rapporteur how it was possible to ensure the independence of judges and other members of the judiciary when that independence was undermined by certain laws which, adopted by States in the name of combating terrorism, appeared to promote arbitrary detention and certain practices that were at odds with the international obligations undertaken by those States.

84. **Mr. Suárez** (Colombia), referring to the concerns expressed in paragraph 35 of the report regarding the fact that in Colombia, prosecutors in some cases referred trials that should fall within their jurisdiction to military courts or failed to claim jurisdiction, wished to clarify that conflicts of competence in such cases were resolved by the Procurator-General's Office or the Supreme Judicial Council. If a prosecutor did not have the jurisdiction to deal with a certain case, the trial would not necessarily be referred to a military court.

85. **Mr. Despouy** (Special Rapporteur on the independence of judges and lawyers), replying to questions, said that the useful clarification provided by the representative of Egypt regarding paragraph 40 of the report underlined the importance of dialogue and cooperation between Member States and Special Rapporteurs, particularly since it had drawn his attention to the fact that he had made the same error in his previous report. He took note of the observations made, and would examine the situation in detail.

86. He thanked the representative of Chile for drawing attention to the vital issue of bringing national legislation governing the judiciary into line with international standards, and in that regard underscored the importance of the future adoption by the General Assembly of the draft principles governing the administration of justice through military tribunals under consideration by the Human Rights Council.

87. In response to the question as to whether and how he would give future consideration to international standards governing the administration of justice in emergency situations, he said that the erosion of human rights and the frequent transfer of jurisdiction from ordinary courts to emergency tribunals or even military tribunals in such situations were problems that required special treatment, and that he would address them in future reports.

88. Regarding the problem of justice in countries in transition and post-conflict countries, he said that the key challenge was to combat impunity from the outset of the transition process, and that justice was one of the fundamental pillars that enabled that process to be carried forward.

89. The role of associations of judges and lawyers in international cooperation, especially during transition periods, was crucial. In particular, the role of judges as international observers in national elections provided greater reassurance to judicial authorities and inspired greater confidence in the credibility of the elections than experts or persons with a political background.

90. The experiences of South Africa and a number of Central American countries in coordinating the work of truth commissions and ordinary courts had been very encouraging. Truth commissions complemented the work of ordinary courts by providing them with vital inputs that could help to bring perpetrators of human rights violations to justice, and should therefore be studied more closely.

91. His next report would discuss the threats, pressures and intimidation to which judges and lawyers were often subject, and the need to ensure that such conditions were eliminated in order to preserve judicial independence.

92. Justice systems could not function properly unless both access to justice and independence of the judiciary were guaranteed; indeed, there were countries which had an independent judiciary, yet only a small percentage of the population had access to the courts. In such countries, defendants were more likely to be deprived of their rights than to be able to defend them before a court. Access to justice was therefore a major problem, and one which he hoped to consider in depth in his next report.

93. Responding to the comments made by the representative of Guinea-Bissau, he said that the International Convention for the Protection of All Persons from Enforced Disappearance was of preventive value even in countries where such disappearances did not occur.

94. Regarding country visits, he said that, while many countries welcomed his work in the field and had been very cooperative, those that were experiencing the greatest difficulties and to which he felt he could make a special contribution often responded less favourably. He therefore urged those countries to issue invitations to the Special Rapporteur.

95. Referring to the Iraq Supreme Criminal Tribunal, he said that despite the prevailing violence in Iraq and its effect on the proceedings of the Tribunal, it was crucial to show Iraq and the world that Saddam Hussein would be adequately tried for his terrible crimes, that impunity would not be tolerated and that the Tribunal was acting in accordance with the principles of international law.

96. He was encouraged by the question raised by the representative of Japan, and expressed the hope that the international community would support all actors participating in the trials conducted by the Extraordinary Chambers in Cambodia.

97. Responding to the comments made by the representative of Cuba, he said that counter-terrorist laws affected not only the rights of detainees but all rights, such as the right to demonstrate, the right to strike and freedom of expression.

98. The clarifications provided by the representative of Colombia illustrated the usefulness of interactive dialogue between Member States and the Special Rapporteur in identifying reporting errors and clarifying information on individual countries.

The meeting rose at 6.15 p.m.